

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On April 23, 2018 appellant, then a 45-year-old financial analyst, filed an occupational disease claim (Form CA-2) alleging that she sustained a panic/anxiety attack causally related to factors of her federal employment, including an event on March 15, 2018 where she experienced stress caused by her supervisor, S.H. On that date, she was preparing for a meeting with S.H. when she started experiencing dizziness, shortness of breath, and sharp pain in her chest. Appellant noted that she had passed out three times and hit her head on the desk. She was taken by ambulance to the hospital that day and did not return to work.

March 15, 2018 Chicago Fire Department records noted that appellant was found crying and indicated “that [appellant] was having some tough times and is overwhelmed.” It also noted that she had a history of anxiety.

In an 11-page statement dated April 23, 2018, appellant described the employment-related events which she alleged caused her stress. She indicated that before S.H. became her supervisor, they were friends and then coworkers. In January 2018, S.H. related to appellant that she was jealous of her. On January 4, 2018 S.H. gave appellant a verbal warning regarding the way appellant dressed. During the conversation, S.H. told her that a male coworker had complained that her “[breasts] were out.” S.H. told appellant to cover-up with her shawl. Appellant indicated that she always dressed appropriately and was surprised that S.H. would present concerns about her attire as a verbal warning.

On Friday, January 5, 2018, appellant teleworked, but did not see three e-mails from S.H. beginning at 1:00 p.m. The first e-mail from S.H. asked what appellant was working on, the second e-mail asked appellant to call her, and the third e-mail requested that appellant submit a leave request and indicated that her telework may be limited in the future. Appellant noted that she must have been off-line for most of the afternoon. On Monday, January 8, 2018, she spoke with S.H. as to why she had not called on Friday, her regular telework day. Appellant decided to take the time she had worked on Friday afternoon as leave. On the same day, she indicated that she was humiliated when her coworker, “A”, advised her that S.H. had discussed both the wardrobe and telework issues with her. S.H. advised appellant that the wardrobe discussion was friendly advice, not a warning, and that she should not take it so seriously. Appellant indicated that she started to cry when S.H. stated that “[appellant] forgot I was such a ‘spaz’.” She alleged that S.H. also advised her to put her work expectation goals away as “it’s stressing you out.” Appellant noted that she told S.H. that the department was going downhill because of her management tactics. She alleged that, from that point forward, S.H. harassed and bullied her, continuously questioning her work.

On Tuesday, January 9, 2018, S.H. directed appellant in an e-mail to amend her annual leave for Friday from 2.5 hours to 4 hours as she could not begin work at 6:00 a.m. on telework days. On Thursday January 11, 2018 appellant requested and was granted unscheduled telework.

However, she could not log on that day and contacted the Help Desk, who then contacted S.H. to verify the problem. Appellant used annual leave because she could not log onto her computer, but S.H. continued to question why appellant was having her computer issues. She alleged that S.H. required her to send her proof of everything she was doing at all times.

On February 21, 2018 appellant alleged that S.H. provided “unclear direction” which was a “set up” regarding deleting *versus* archiving files.

On February 27, 2018 S.H. discussed appellant’s use of credit hours. Appellant indicated that she was very intimidated and wanted to show S.H. that she was still one of her “worker bees.”

In a March 1, 2018 e-mail, S.H. questioned the monitoring of a report, noting that “a lot of surveys were missing.” At a March 8, 2018 biweekly meeting, S.H. noted that appellant’s data integrity audit was full of errors and that “it would affect my mid-year performance evaluation.” Appellant told S.H. that she had not been adequately trained by E.G., to which S.H. responded that appellant was a Commissioned Compliance Examiner. She left S.H.’s office thinking that S.H. was going to falsely claim poor work performance and put team members against her to remove her from work.

In a March 12, 2018 staff meeting, S.H. made comments which appellant alleged were directed at her. These comments were: “we are not family, and I am not your mother;” “do n[o]t expect to be invited to my daughter’s wedding and I do n[o]t expect to be invited to your baby’s religious ceremony;” “you guys are the reason I’m sick;” “you are not able to use [employing establishment] Technology for your personal use;” and “if you have an issue with your coworker, handle it directly with them. I do n[o]t want to know about it.”

On March 13, 2018 appellant requested a meeting with S.H. and E.G. about the errors found in her work. On the same date, she met with S.L., a union steward, to discuss her issues with S.H.’s bullying, the excessive monitoring, the threats of removal of her telework privileges, and the negative treatment she received from her work group.

On March 14, 2018 appellant was humiliated to learn from E.G. that S.H. was very displeased with her work. On March 15, 2018 she met with her union steward to discuss filing a grievance. Prior to a meeting with S.H. on the same day to discuss her lack of training, appellant experienced dizziness, shortness of breath, chest pain, and lost consciousness twice. The employing establishment called 911 and she was found to have had a panic attack.

On April 2, 2018 S.H. contacted appellant *via* e-mail inquiring regarding forms to complete for the current claim. Appellant felt that it was odd as she had already sent five e-mails from a private e-mail and had registered on the Employees’ Compensation Operations & Management Portal (ECOMP).

OWCP received a series of interoffice e-mails, and appellant’s November 30, 2017 performance plan and evaluation.

OWCP also received medical evidence by Dr. Mary Schraufnagel, a Board-certified internist, including notes dated April 20 and May 4 and 7, 2018, and an April 20, 2018 form report, which noted that appellant was being treated for anxiety due to work-related stress. Appellant also

submitted a May 11, 2018 report by a licensed clinical professional counselor therapist, which noted that appellant reported symptoms of acute stress disorder following an incident at work related to a conflict with her supervisor.

The employing establishment controverted appellant's claim. In a May 2, 2018 statement, S.H. denied ever stating or implying that she was going to fire appellant. Beginning January 2018, she indicated that she began addressing appellant's observed job performance and behavior that were of concern or less than satisfactory. These included: appellant's nonresponse to work e-mails on a scheduled telework day; appellant's adjusted work hours on telework day to a 6:00 a.m. start time without prior supervisory approval per Directive 2121.1 FDIC Telework Program; appellant's errors in routine reports for multiple weeks despite prior warnings that such errors were "unacceptable;" a coworker's complaint that appellant's behavior during a team meeting and one-on-one conversation, was confrontational, argumentative, and irrational; and appellant's improper fourth-quarter data integrity audit. S.H. indicated that appellant was not receptive to criticism about her audit work.

Following a June 11, 2018 development letter, OWCP received a June 27, 2018 report from Dr. David A. Barthwell, a Board-certified psychiatrist. Dr. Barthwell noted a history of appellant's workplace interactions with her supervisor and appellant's physical/emotional responses. He diagnosed panic disorder which he opined that was a result of appellant's reaction to events she experienced on her job.

In response to OWCP's development letters dated June 11 and July 10, 2018, S.H. submitted a July 20, 2018 additional statement, noting that on January 4, 2018 she spoke to appellant about a concern raised by a male coworker regarding appellant's attire. She further noted that the work that appellant was performing on January 5, 2018 would have required that she be online, however, appellant was nonresponsive to her afternoon e-mails on that date and agreed to submit a leave request. S.H. denied that she discussed the attire concern with any other colleague, that she targeted appellant for harassment, or that she required appellant to work harder than coworkers. She indicated that, during the March 12, 2018 meeting, she covered matters in the attached agenda and the subject of her health, and possibly the plans for her daughter's wedding. However, appellant mischaracterized the content, context, and tone of the meeting. S.H. denied that on March 13, 2018 appellant indicated to her that she was not properly trained or expressed any apprehension about performing independent audit work. She asserted that E.G. was aware of appellant's poor performance during the audit review as she was the initial reviewer of appellant's audit work. S.H. noted that on March 20, 2018 she asked appellant how she wanted to use other leave as she did not have enough sick leave to cover days off work due to illness.

Appellant completed OWCP's development questionnaire on August 10, 2018. In an August 10, 2018 statement, she reported additional stressors including: an internal investigation of S.H.'s statements made in the March 12, 2018 staff meeting; issues regarding appellant's leave usage after the filing of the current claim; and retaliation by D.H. in alleging that appellant had violated security policy by providing information in ECOMP to support her claim.

In an additional statement, appellant alleged additional stressors due to retaliation from the employing establishment. On August 7, 2018 she was informed by human resources that her 12-weeks of approved Family and Medical Leave Act (FMLA) leave ended on July 27, 2018. On

August 9, 2018 appellant was notified that she was being investigated for breaching the employing establishment's privacy policy. On August 16, 2018 the Deputy Regional Director denied her request for reasonable accommodation, specifically to be moved to another supervisor, as her mental illness was not considered a disability. On September 4, 2018 R.H., a manager, denied appellant's leave without pay (LWOP) request. Appellant was informed that she was to return to work under the supervision of S.H. and that she was being charged as absent without leave (AWOL) back dating to July 27, 2018, which could serve as the basis for removal. She indicated that she had a panic attack due to the denial letter and was hospitalized on September 5, 2018 for post-traumatic stress disorder (PTSD), major depression, anxiety, and panic attacks.

On October 29, 2018 OWCP prepared a statement of accepted facts, finding that the January 4, 2018 incident regarding her attire and appellant's January 11, 2018 difficulties logging in occurred within the performance of her duties. All other allegations were either not proven to have occurred or found not to have occurred within the performance of duty.

In an undated statement, A.S., a coworker, confirmed appellant's recollection of the March 12, 2018 meeting. She indicated that the employees were intimidated and would not disagree or question S.H. concerning the statements she made in staff meetings. A.S. noted that a grievance was filed and all employees were interviewed concerning the statement's S.H. made at the March 12, 2018 meeting. She also related that she had heard that S.H. was going to fire someone who "had an attitude that they knew everything and would not listen to the person training her" and that the person had not been employed "that long" with the employing establishment.

By decision dated December 12, 2018, OWCP determined that appellant had established the following compensable factors: that on January 4, 2018 S.H. had advised appellant that someone expressed concern about appellant's attire; and that on January 11, 2018 appellant was unsuccessful logging on while teleworking and that the Help Desk was unable to assist her. It also found events which had occurred as alleged, but were not compensable employment factors; and events which have not been established to have occurred as alleged. However, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted work events.

OWCP subsequently received a December 6, 2018 letter from appellant reiterating her claims, a December 7, 2018 letter from T.G., a friend, and a November 15, 2018 letter from S.L., the union steward and additional medical evidence.

On December 19, 2018 appellant, through her then-counsel, requested an oral hearing before an OWCP hearing representative. On March 8, 2019 appellant's then-counsel changed the request to a request for review of the written record.

By decision dated April 1, 2019, an OWCP hearing representative modified the December 12, 2018 decision to find that no incidents had occurred within the performance of duty. The hearing representative specifically found that the January 4, 2018 discussion regarding appellant's clothing and the technology difficulties appellant experienced on January 11, 2018 while teleworking were administrative or personnel issues and thus noncompensable employment factors.

On March 17, 2020 appellant, through current counsel, requested reconsideration and submitted additional medical evidence.

OWCP also received a January 31, 2019 affidavit of S.H. wherein she again denied appellant's allegations.

By decision dated June 1, 2020, OWCP denied modification of its April 1, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim,⁴ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁸ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.⁹

³ *Id.*

⁴ *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *E.G., id.; S.S., id.; G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 20 C.F.R. § 10.115; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See P.B.*, Docket No. 19-1252 (issued March 22, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *See S.O.*, Docket No. 20-1271 (issued March 9, 2021); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001); *Lillian Cutler, id.*

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁰ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹¹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹²

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹³ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.¹⁵ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹⁶ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.¹⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

The Board notes that appellant has, in part, attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her

¹⁰ See *C.J.*, Docket No. 19-1722 (issued February 19, 2021); *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ *Id.*

¹² *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁴ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁶ *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁷ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

employment duties under *Cutler*.¹⁸ Appellant reported difficulties with logging in on January 11, 2018 while on telework. She, however, did not allege that her technology difficulties were stressful because of an inability to perform her assigned work, rather, she explained that she chose to take annual leave that day, after her inability to log in, because she was afraid of repercussions from her inability to work that day. Perceptions and feelings, alone, are not compensable.¹⁹ Appellant has not established any improper negative repercussion from her technology difficulties on January 11, 2018. Thus, she has not met her burden of proof to establish a compensable employment factor under *Cutler*.²⁰

Appellant's initial claim centered around the events of March 15, 2018. On that date she alleged that she experienced physical symptoms while preparing for a meeting with her supervisor, S.H., to discuss her work performance, which appellant had been told contained errors. The Board has held that a supervisor's review and criticism of work product is an administrative function of the employment establishment and is not a compensable employment factor absent error or abuse on the part of the employing establishment.²¹ Appellant outlined a series of actions by her supervisor, S.H. which she alleged constituted error and abuse regarding specific administrative/personnel matters or harassment, and which led to appellant's emotional condition as of March 15, 2018.

Appellant attributed her emotional condition to perceived unfair counseling regarding her attire on January 4, 2018. However, she has not established that the employing establishment erred or was abusive as to this specific act of counseling which is an administrative function of S.H.'s managerial position.²² Appellant also has not established that S.H. discussed the issue with other colleagues. The Board notes that S.H. has specifically denied this allegation. Thus, appellant has not established a compensable employment factor with respect to these administrative matters.

Appellant further alleged that S.H. and management mishandled matters related to use of and assignment of leave -- including requiring her to take leave for being offline on January 5, 2018, adjusting the amount of leave taken on January 5, 2018 as telework hours did not begin at 6:00 a.m., and changing leave from LWOP to AWOL after her FMLA period ended. She alleged that S.H. closely monitored her work and that S.H. provided conflicting or vague work instructions with regards to archiving or deleting files. Appellant also alleged that management denied her request for reasonable accommodation, and improperly initiated an investigation of a security breach due to information being provided in ECOMP. The Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on

¹⁸ See *Lillian Cutler*, *supra* note 8.

¹⁹ *G.R.*, *supra* note 10.

²⁰ See *supra* note 8.

²¹ *G.G.*, Docket No. 13-644 (issued July 19, 2013); *Roger W. Robinson*, 54 ECAB 846 (2003).

²² See *V.R.*, Docket No. 18-1179 (issued June 11, 2019).

the part of the supervisor.²³ Further, the handling of leave requests,²⁴ work assignments and monitoring of work, reasonable accommodation requests,²⁵ and workplace investigations²⁶ are administrative functions of the employing establishment, and not duties of the employee.²⁷ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁸ While appellant submitted e-mails that, concerned some of these administrative matters, this evidence did not demonstrate that S.H. or other employing management officials committed error or abuse. She has not established that the employing establishment erred or was abusive in these administrative matters. S.H. acknowledged holding appellant accountable for her work performance. The Board notes that S.H. also provided explanations as to why the administrative/personnel actions were carried out. S.H. explained that, beginning January 2018, she began addressing observed deficiencies in appellant's job performance and behavior. Specifically, appellant was nonresponsive to work e-mails on January 5, 2018 a scheduled telework day, and was advised to take leave, she adjusted her work hours on her telework day to a 6:00 a.m. start time without prior supervisory approval, her routine reports contained errors for multiple weeks despite prior warnings that such errors were "unacceptable," and she did not properly conduct the fourth-quarter data integrity audit and was advised that this would be a performance issue. S.H. also denied that she required appellant to work harder than coworkers denied setting appellant up for failure. The Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable.²⁹ Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, she has not established a compensable employment factor.

Appellant asserted that her emotional condition was exacerbated by S.H.'s handling of her compensation claim. However, the Board has held that a condition related to OWCP's or the employer's mismanagement of a compensation claim does not arise in the performance of duty because the processing of such claim has no relation to appellant's regular or specially-assigned duties.³⁰

²³ *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *V.R.*, *id.*

²⁴ *G.P.*, Docket No. 20-1063 (issued February 3, 2021); *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

²⁵ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

²⁶ *J.T.*, Docket No. 20-0390 (issued April 2 2021).

²⁷ *See C.J.*, *supra* note 10; *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

²⁸ *See V.R.*, *supra* note 22; *Y.B.*, Docket No. 16-0193 (issued July 23, 2018).

²⁹ *See supra* note 23.

³⁰ *K.C.*, Docket No. 13-585 (issued November 18, 2013); *George A. Ross*, 43 ECAB 346 (1991).

Thus, as appellant has not substantiated error or abuse by the employing establishment, she has not established a compensable employment factor with respect to the above administrative and personnel matters.³¹

The Board also finds that appellant has not established, with corroborating evidence that she was harassed, discriminated against, and/or subject to reprisals by the employing establishment. Appellant asserted that S.H.'s statements made during the March 12, 2018 staff meeting were geared toward her and rose to the level of harassment. Although A.S. confirmed that S.H. made certain statements during the March 12, 2018 staff meeting, appellant has not established that S.H.'s statements were directed toward her, she has not established a compensable employment factor with respect to the claimed harassment.³²

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.³³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

³¹ *R.B.*, *supra* note 28.

³² *B.S.*, *supra* note 13.

³³ *See B.O.*, *supra* note 21 (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board